



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0647]

RIN 1625-AA00

Safety Zone; CBWTP Outfall Diffuser Improvements, Columbia River, Portland, OR

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule; extension of effective period.

SUMMARY: The Coast Guard is amending a temporary final rule currently establishing a temporary safety zone for certain waters of the Columbia River. This temporary rule extends the duration of the temporary safety zone an additional 15 days. This action is necessary to provide for the safety of life on these navigable waters near Portland, OR, at Columbia River Mile 105.6 during construction through the newly anticipated end date of March 15, 2022. This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Sector Columbia River or a designated representative.

DATES: The effective period of 33 CFR 165.T13-0647, published at 86 FR 54622 (October 4, 2021), which was set to expire at 11:59 p.m. on February 28, 2022, is now extended through 11:59 p.m. on March 15, 2022. The amendment in this rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0647 in the search box and

click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Sean Morrison, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503-240-9319, email D13-SMB-MSUPortlandWWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

As the final document in a notice-and-comment rulemaking, on October 4, 2021, the Coast Guard published a temporary final rule (TFR) entitled "Safety Zone; BWTP Outfall Diffuser Improvements, Columbia River, Portland, OR" (86 FR 54622) that established a temporary safety zone regulation, 33 CFR 165.T13-0647, and made it effective from November 1, 2021, through 11:59 p.m. on February 28, 2022. This new TFR is extending the effective period of that regulation to 11:59 p.m. on March 15, 2022.

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking with respect to this rule because it would be impracticable and contrary to the public interest. The Coast Guard was unable to publish an NPRM and hold a reasonable comment period for this rulemaking due to the notification of unpredictable weather related complications and the construction extension request being made on January 6, 2022. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is

needed to respond to the potential safety hazards associated with the CBWTP Outfall Diffuser Improvements Project before the safety zone is lifted.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Columbia River (COTP) has determined that potential hazards associated with the construction project will be a safety concern for anyone within the designated area of the CBWTP Outfall Diffuser Improvements. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone during the scheduled construction period.

IV. Discussion of Comments, Changes, and the Rule

We received no comments on our notice of proposed rulemaking published August 22, 2021 (86 FR 47044), for the TFR currently in place. The only change in the regulatory text of this rule is extending the effective period until March 15, 2022.

The currently established temporary safety zone is effective from 12:01 a.m. on November 1, 2021, through 11:59 p.m. on February 28, 2022. This rule extends the duration of the temporary safety zone through 11:59 p.m. on March 15, 2022. The safety zone will continue to cover all navigable waters of the Columbia River, surface to bottom, approximately 300 yards to the east and west side of the Burlington Northern Railroad Bridge on the Oregon side of the Columbia River from the shoreline to the outside of the main navigational channel; specifically beginning at the shoreline at 45°37'26.2"N, 122°41'46.91"W, northeast to 45°37'33.206"N, 122°41'37.699"W, southeast to 45°37'23.4"N, 122°41'18.1"W, thence southwest to 45°37'16.27"N, 122°41'30.75"W, and along the shoreline back to the beginning point. The duration of the zone is intended to ensure the safety of vessels and these navigable waters while the construction project is underway. The duration of the zone is intended to ensure the safety of vessels and these navigable waters during the construction period. No vessel or

person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of the Columbia River during the construction project. Moreover, the Coast Guard will issue a Notice to Mariners about the zone, and the rule will allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. While some

owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves extending a temporary safety zone by 15 days that will prohibit vessel traffic to transit the area during construction operations. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Revise § 165.T13-0647(d) to read as follows:

§ 165.T13-0647 Safety Zones: Safety Zone; CBWTP Outfall Diffuser Improvements, Columbia River, Portland, OR.

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(d) *Enforcement period.* This safety zone is in effect from 12:01 a.m. on November 1, 2021, through 11:59 p.m. on March 15, 2022. It will be subject to enforcement this entire period unless the Captain of the Port Columbia River determines it is no longer needed, in which case the Coast Guard will inform mariners via Notice to Mariners.

Dated: February 3, 2022.

G. M. Bailey,
Captain, U.S. Coast Guard,
Acting Captain of the Port, Columbia River.

